

BRB No. 92-2123

GLORIA J. LETLOW)	
)	
Claimant-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	DATE ISSUED:
INCORPORATED)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Supplemental Decision and Order-Awarding Attorney's Fee of James W. Kerr, Jr., Administrative Law Judge, United States Department of Labor.

Rebecca J. Ainsworth (Maples & Lomax, P.A.), Pascagoula, Mississippi, for the claimant.

Traci M. Castille (Franke, Rainey & Salloum), Gulfport, Mississippi, for the self-insured employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Supplemental Decision and Order - Awarding Attorney's Fee (88-LHC-3304) of Administrative Law Judge James W. Kerr, Jr., rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). The amount of an attorney's fee award is discretionary and will not be set aside unless shown by the challenging party to be arbitrary, capricious, an abuse of discretion, or not in accordance with law. *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant, a pipefitter at employer's shipyard since 1974, filed a claim for occupational hearing loss benefits under the Act against employer on March 17, 1987. The parties were unable to resolve the claim administratively and the case was referred to the Office of Administrative Law Judges for a formal hearing. In his Decision and Order, the administrative law judge awarded claimant compensation for a .8 percent binaural hearing loss pursuant to 33 U.S.C. §908(c)(13)(B) based upon an average weekly wage of \$582.49. The administrative law judge also awarded claimant interest, past and future medical benefits under 33 U.S.C. §907, and an assessment under 33 U.S.C. §914(e).

Thereafter, claimant's attorney filed a fee petition for work performed before the administrative law judge, in which he requested \$3,162.25, representing 24.75 hours of services at \$125 per hour plus expenses of \$68.50. Employer filed objections and claimant replied to employer's objections. In a Supplemental Decision and Order-Awarding Attorney's Fee, the administrative law judge, addressing employer's objections, disallowed 7.375 of the 24.75 hours claimed, and reduced the \$125 hourly rate requested to \$100 for non-trial work. Accordingly, he awarded claimant's counsel a fee of \$1,868.50, representing 14.875 hours at \$100 per hour, 2.5 hours at \$125 per hour, plus the \$68.50 in requested expenses.¹ Employer appeals the fee award on various grounds, incorporating the objections it made below into its appellate brief. Claimant, incorporating her reply to employer's objections below, responds, urging affirmance.

Initially, we reject employer's argument that the amount of the fee award is excessive. Although employer asserts that consideration of the quality of the representation provided, the complexity of the issues involved, and the amount of benefits obtained mandates a complete reversal or at least a substantial reduction of the \$1,868.50 fee awarded, we need not address these arguments which employer has raised for the first time on appeal.² See *Bullock v. Ingalls Shipbuilding, Inc.*, 27 BRBS 90 (1993)(*en banc*)(Brown and McGranery, JJ., concurring and dissenting), *modified on recon. en banc*, 28 BRBS 102 (1994), *aff'd in pertinent part mem. sub nom. Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995); *Hoda v. Ingalls Shipbuilding, Inc.*, 28 BRBS 197 (1994) (McGranery, J., dissenting) (Decision on Recon.); *Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, 12 F.3d 209 (5th Cir. 1993); *Clophus v. Amoco Production Co.*, 21 BRBS 261 (1988).

Employer further contends that the hourly rates awarded by the administrative law judge do not conform to reasonable and customary charges in the area and that an hourly rate of \$80 to \$85 for claimant's senior attorney, and a rate of \$70 to \$75 for the junior associates would be more appropriate. We disagree; employer has not established an abuse of discretion committed by the administrative law judge in this regard.³ See *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *see generally Welch v. Pennzoil Co.*, 23 BRBS 395 (1990).

¹The administrative law judge awarded counsel a one-hour fee for time spent in defending the fee petition.

²We reject employer's reliance on *Cuevas v. Ingalls Shipbuilding, Inc.*, BRB No. 90-1451 (Sept. 27, 1991)(unpublished), in support of its assertion that the fee awarded is excessive. The Board has held that unpublished cases should not be cited or relied upon by the parties as they lack precedential value. See *Lopez v. Southern Stevedores*, 23 BRBS 295, 300, n.2 (1990).

³Employer has attached a copy of an article from a Mississippi Defense Lawyers Association newsletter to its objections; however, the article merely indicates that fees for defense attorneys in the area range widely. This does not support employer's contention that the hourly rate requested by claimant's counsel in this case is unreasonable.

Employer also objects to counsel's use of the minimum quarter-hour billing method. Although the administrative law judge summarily dismissed employer's objection in this regard, the administrative law judge nonetheless reduced four one-quarter hour entries claimed in connection with the preparation or review of routine correspondence on June 15, 1989, July 6, 1989, July 12, 1989, and July 13, 1989, from one-quarter to one-eighth of an hour. The administrative law judge's reduction of these entries is consistent with the United States Court of Appeals for the Fifth Circuit's mandate in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Fairley]*, No. 89-4459 (5th Cir. July 25, 1990)(unpublished) and *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995)(unpublished), that attorneys should generally charge no more than one-eighth of an hour for review of a one-page letter and no more than one-quarter of an hour for preparation of a one-page letter. Although our review of the remainder of counsel's fee petition indicates that it generally conforms to the *Biggs* and *Fairley* guidelines, the one-quarter hour entries claimed and awarded by the administrative law judge for review of routine correspondence on June 13, 1989, and July 13, 1989, are excessive under the aforementioned criteria. Accordingly, we modify the administrative law judge's fee award to reflect the reduction of these two entries to one-eighth of an hour each consistent with *Biggs* and *Fairley*. See generally *Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995).

Finally, employer contests the number of hours requested by counsel and approved by the administrative law judge, contending that time spent in certain discovery-related activity, in trial preparation and attendance, and in preparing and reviewing various legal documents was either unnecessary, excessive, or clerical in nature.⁴ In entering the fee award, the administrative law judge considered the totality of employer's objections, disallowed 7.375 of the hours claimed as excessive, and found the remaining itemized entries claimed to be reasonable and necessary. With the exception in the reduction of the two quarter-hour entries previously discussed, we decline to further reduce or disallow the hours approved by the administrative law judge. See *Maddon*, 23 BRBS at 62; *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981).

⁴We reject employer's reliance on the fee award of Administrative Law Judge A.A. Simpson in *Cox v. Ingalls Shipbuilding, Inc.*, No. 88-LHC-3335 (September 5, 1991), in which Judge Simpson reduced various entries as duplicative of the work performed in other cases, and awarded differently hourly rates to claimant's attorneys based on their status as either a senior partner or relatively new associate. The amount of the attorney's fee award lies within the discretion of the body awarding a fee, and the decision of an administrative law judge regarding the amount of a fee is not binding precedent on another body in a different case.

Accordingly, the administrative law judge's Supplemental Decision and Order-Awarding Attorney Fees is modified to reflect the reduction of two itemized entries on June 13, 1989, and July 13, 1989, from one-quarter to one-eighth of an hour each. Counsel is therefore entitled to a fee of \$1,775 representing 14.625 hours at \$100 per hour and 2.5 hours at \$125 per hour, plus \$68.50 in expenses for work performed before the administrative law judge. In all other respects, the decision is affirmed.⁵

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

⁵Claimant's contention that employer is liable for interest on the attorney's fee award under *Guldry v. Booker Drilling Co. (Grace Offshore Co.)*, 901 F.2d 485, 23 BRBS 82 (CRT)(5th Cir. 1990), is rejected for the reasons stated in *Fairley v. Ingalls Shipbuilding, Inc.*, 25 BRBS 61, 65 (1991)(decision on remand). *See also Hobbs v. Stan Flowers Co. Inc.*, 18 BRBS 65 (1986), *aff'd sub nom. Hobbs v. Director, OWCP*, 820 F.2d 1528 (9th Cir. 1987).